IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLIATION NO.1115/06

Shri.Subhash Namdeo Pawar .... Applicant

V/s.

The State of Maharashtra .... Respondent

Shri.Z.M. Avhad Adv. for the applicant.
Miss.S.D. Shinde APP for the State.

CORAM : V.M. KANADE, J.

DATED : 21/04/2006

P.C.:-

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant was arrested on 01/01/2006 in connection with C.R.No.1/2006 registered with Sinnar Police, Sinnar Dist:Nashik For the offences punishable U/s.302 of IPC.

3. It is the case of the prosecution that the applicant assaulted deceased and deceased died. P.M. Notes indicates that there was one injury on his head.

4. Learned Counsel for the applicant on the other hand submitted that chargesheet has been filed after lapse of 90 days. On that ground he was entitled to be released on bail as a matter of right. Secondly, he submitted that the applicant was trying to rescue his wife who was being assaulted by six people who were under the influence of liquor and while acting in defence, one of the persons died. He submitted that even on merit, therefore, case U/s.302 is not made out.

5. Learned APP for the State filed an affidavit and stated that though chargesheet was ready on 25/3/2006 which was actually filed on 3/4/2006. Thus it is evident that an indefeasible right has been created in favour of the applicant on account of failure on behalf of investigating agency to file the chargesheet within 90 days. Apart from that taking into consideration the material on record, it does appears that cross complaint was filed by the present applicant which indicates that he had alleged in the said complaint that certain persons had entered his house and molested his wife and were trying to set his house on fire. Taking into

considerations these two factors, the applicant would have to be released on bail. In my view, the applicant be released on bail in the sum of Rs.5,000/- with one or two sureties in like amount. The applicant shall report to Sinner Police Station once in a month.

6. The applicant shall not tamper with the evidence or threaten the witnesses. If any complaint is received by the Investigating Officer, the Public Prosecutor is at liberty to file an application for cancellation of bail.

7. The Trial Court shall not be influenced by any observations made by this Court while deciding the application and they shall not be construed as an expression of opinion on merits of the case.

8. Apology tendered by the I.O. is accepted.

9. The application is accordingly disposed of.

V.M. KANADE J.